

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
LITTLE ROCK DIVISION**

JAMES E. HORVATH

PLAINTIFF

VS.

4:07CV00113 GTE/JTR

JIM HALL, Pottsville Police Officer, et al.

DEFENDANTS

**ORDER**

Pending before the Court is Plaintiff's Motion for a Temporary Restraining Order.<sup>1</sup> *See* docket entry #6. For the reasons set forth herein, the Motion will be denied.

**I. Background**

On February 26, 2007, Plaintiff, who is currently being held in the Pope County Detention Center ("PCDC"), filed a *pro se* § 1983 Complaint alleging that Defendants violated his constitutional rights. *See* docket entry #2. On March 14, 2007, the Court ordered Plaintiff to file an Amended Complaint containing specific information the Court needs in order to complete the screening function mandated by 28 U.S.C. § 1915A.<sup>2</sup> *See* docket entry #4.

On March 19, 2007, Plaintiff filed a Motion for a Temporary Restraining Order, asserting

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<sup>1</sup>On March 20, 2007, the Honorable G. Thomas Eisele, United States District Judge, referred the Motion to this Court for resolution. *See* docket entry #7.

<sup>2</sup>In particular, the Court directed Plaintiff to specify: "(1) whether he was convicted (in any court) of harassment charges in regard to his October 8, 2005 arrest; (2) if so, the status of any appeals of that harassment conviction; and (3) whether the allegations raised in this case are related to his January 31, 2007 harassment conviction, which is the subject of his current habeas action, *Horvath v. Jay Winters*, 4:07CV00157." *See* docket entry #4 at 3-4.

that the PCDC is: (1) failing to providing him with sufficient writing supplies and postage;<sup>3</sup> (2) refusing to provide him with access to legal materials or a law library; and (3) opening his legal mail. *See* docket entry #6. Accordingly, Plaintiff asks the Court to enter a Temporary Restraining Order prohibiting the PCDC from opening his legal mail and requiring them to provide him with “sufficient” writing materials so that he may properly pursue this matter, as well as several cases he has pending in state and federal court. *Id.* Importantly, Defendants have not yet been served with the Complaint or given an opportunity to respond to Plaintiff’s Motion for a Temporary Restraining Order.

## **II. Discussion**

A temporary restraining order is an extraordinary form of relief that is granted before the adverse party has been given notice and an opportunity to respond. *See* Fed. R. Civ. P. 65(b). Accordingly, the court may enter a temporary restraining order if the moving party demonstrates that he or she will suffer “immediate and irreparable injury, loss, or damage.” *Id.*

In regard to Plaintiff’s allegations of insufficient writing supplies and postage, the Court notes that in the last month it has received from Plaintiff a Complaint form including nine pages of handwritten attachments and a four-page, handwritten Motion for a Temporary Restraining Order. *See* docket entries #2 and #7. Thus, it appears that Plaintiff has sufficient writing materials and postage to file a concise Amended Complaint containing the limited information requested by the Court in its March 14, 2007 Order. Additionally, Plaintiff does not need access to a law library or legal materials to prepare his Amended Complaint. Finally, contrary to Plaintiff’s assertion, the PCDC may open his legal mail to inspect it for contraband. *See Gardner v. Howard*, 109 F.3d 427,

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<sup>3</sup> Specifically, Plaintiff alleges that each week he receives two to four pieces of paper a week, two envelopes a week, and postage for two letters. *See* docket entry #7.

430-431 (8<sup>th</sup> Cir. 1997); *Cooper v. Delo*, 997 F.2d 376, 377 (8th Cir. 1993); *Jenson v. Klecker*, 648 F.2d 1179, 1182 (8<sup>th</sup> Cir. 1981). Accordingly, the Court concludes that Plaintiff has failed to demonstrate the type of “immediate and irreparable injury, loss, or damage” sufficient to justify the issuance of a temporary restraining order.

### **III. Conclusion**

IT IS THEREFORE ORDERED THAT Plaintiff’s Motion for a Temporary Restraining Order (docket entry #6) is DENIED.

Dated this 22<sup>nd</sup> day of March, 2007.

  
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UNITED STATES MAGISTRATE JUDGE